Supreme Court, U.S.
FILED
05-207 AUG 10 2005
OFFICE OF THE CLERK

No.

IN THE

Supreme Court of the United States

CELLCO PARTNERSHIP, *et al.*,
Petitioners,

v.

J. DOUGLAS PINNEY, *et al.*,
Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

ANDREW G. MCBRIDE
HELGI C. WALKER
KATHRYN COMERFORD TODD
JOSHUA S. TURNER
WILEY REIN & FIELDING LLP
1776 K Street, N.W.
Washington, DC 20006
(202) 719-7000

JOHN H. BEISNER
Counsel of Record
BRIAN P. BROOKS
SARAH A. GOLDFRANK
O'MELVENY & MYERS LLP
1625 Eye Street, N.W.
Washington, DC 20006
(202) 383-5300

Counsel for Petitioners Cellco Partnership, Verizon Maryland, Inc., and Verizon Communications Inc.
Additional parties and counsel on inside cover and subsequent pages

KENNETH S. GELLER
DAVID M. GOSSETT
MAYER, BROWN, ROWE
& MAW LLP
1909 K Street, NW
Washington, DC 20006
(202) 263-3000

SEAMUS C. DUFFY
CHRISTOPHER M. ARFAA
DRINKER BIDDLE & REATH LLP
One Logan Square
18th & Cherry Streets
Philadelphia, PA 19103
(215) 988-2700

Counsel for SBC Communications, Inc.

PAUL D. KRAUSE
LAURA N. STEEL
WILSON, ELSER, MOSKOWITZ,
EDELMAN & DICKER LLP
1341 G Street, N.W., Suite 500
Washington DC 20015
(202) 626-7660

H. MICHAEL O'BRIEN
JASON P. SULTZER
WILSON, ELSER, MOSKOWITZ,
EDELMAN & DICKER LLP
3 Gannett Drive
White Plains, NY 10604
(914) 323-7000

Counsel for SANYO North America Corporation and Matsushita Electrical Corporation of America

CHARLES L. PERRY
ANDREWS KURTH LLP
1717 Main Street, Suite 3700
Dallas, TX 75201
(214) 659-4681

Counsel for Cellular One Group

EUGENE A. SCHOON
TAMAR B. KELBER
SIDLEY AUSTIN BROWN
& WOOD LLP
Bank One Plaza
10 S. Dearborn
Chicago, IL 60603
312-853-7000

Counsel for T-Mobile USA, Inc. Powertel, Inc., Powertel/ Atlanta, Inc. and Powertel PCS, Inc.

JOHN J. NAGLE III
BODIE, NAGLE, DOLINA, SMITH & HOBBS, P.A.
21 W. Susquehanna Avenue
Towson, MD 21204
(410) 823-1250

Counsel for Communications Electronics, Inc.

DANIEL S. REINHARDT
STEVEN J. HEWITSON
TROUTMAN SANDERS LLP
5200 Bank of America Plaza
600 Peachtree Street, NE
Atlanta, GA 30308-2216
(404) 885-3000

Counsel for Southern Communications Services, Inc.

MAUREEN E. MURPHY
MURPHY & MURPHY, L.L.C.
14 North Rolling Road
Catonsville, MD 21228
(410) 744-4967

Counsel for Baltimore Business Communications, Inc.

FRANCIS A. CITERA
GREENBERG TRAURIG, LLP
77 West Wacker Drive
Suite 2500
Chicago, IL 60601
(312) 456-8413

Counsel for Sony Electronics Inc.

ROBERT B. GREEN
IRWIN GREEN & DEXTER, LLP.
301 W. Pennsylvania Avenue
Towson, MD 21204
(410) 832-0111

Counsel for Cellular Telecommunications & Internet Association

JOHN B. ISBISTER
HAROLD M. WALTER
TYDINGS & ROSENBERG LLP
100 East Pratt Street, Suite 2600
Baltimore, MD 21202
(410) 752-9700

Counsel for Samsung Electronics America, Inc.

PAUL H. VISHNY
PAUL E. FREEHLING
SEYFARTH SHAW LLP
55 East Monroe Street
Suite 4200
Chicago, IL 60603-5803
(312) 346-8000

Counsel for Telecommunications Industry Association

KEVIN B. GETZENDANNER
MATTHEW T. COVELL
ARNALL GOLDEN GREGORY, LLP
171 17th Street NW
Atlanta, GA 30363-1031
(404) 873-8500

Counsel for Mitsubishi Wireless Communications, Inc.

J. STAN SEXTON
DOUGLAS S. BECK
SHOOK, HARDY & BACON, LLP
2555 Grand Blvd.
Kansas City , MO 64108-2168
(816) 474-6550

Counsel for Sprint Spectrum L.P.

QUESTION PRESENTED

Whether the judgment below should be vacated and remanded for reconsideration in light of this Court's intervening decision in *Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg.*, 125 S. Ct. 2363 (2005), which announced a standard for determining the presence of a substantial federal question that is fundamentally inconsistent with the test applied by the Fourth Circuit in this case.

PARTIES TO THE PROCEEDING

Petitioners are Cellco Partnership (doing business as Verizon Wireless), Verizon Communications Inc. (incorrectly named as Verizon Communications, Inc.), Verizon Maryland Inc., Panasonic Corporation of North America (doing business as Matsushita Electrical Corporation of America and incorrectly named as Matsushita Corporation of America), SBC Communications, Inc., Cellular One Group, Voicestream Wireless Corporation (now known as T-Mobile USA, Inc.), Communications Electronics, Inc. (also known as C.E.I., Inc.), Southern Communications Services, Inc. (incorrectly named as Southern Telecom, Inc. also known as Southern Linc), Powertel, Inc., Powertel PCS, Inc., Powertel/Atlanta, Inc., Mitsubishi Wireless Communications, Inc., Baltimore Business Communications, Inc., Sony Electronics Inc., SANYO North America Corporation (incorrectly named as Sanyo North America, Inc. and SANYO Corporation), Samsung Electronics America, Inc., Sprint Spectrum L.P. (doing business as Sprint PCS), Cellular Telecommunications & Internet Association, and Telecommunications Industry Association. Petitioners were defendants in the district court and appellees in the court of appeals.

The following entities were listed as defendants-appellees in the caption to the circuit court's decision below, and are not parties to this petition: Nokia Inc., Nokia Mobile Phones Inc. (formerly known as Nokia Mobile Phones Americas Inc., formerly known as Nokia Mobile Phones Manufacturing USA Inc.), Motorola, Inc. (incorrectly named as Motorola Corporation), Audiovox Communications Corporation, Philips Electronics North America Corporation, QUALCOMM Incorporated (incorrectly named as Qualcomm Corporation), AT&T Corporation, Cingular Wireless LLC (formerly known as Bellsouth Mobility, Inc.), Ericsson Inc. (incorrectly named as Ericsson Wireless Communica-

tions, Incorporated), Kyocera Wireless Corporation as successor in interest to Qualcomm, Nextel Communications of the Mid-Atlantic, Inc., Nextel of New York, Inc., and Nextel South Corp. (each incorrectly named as Nextel Communications, Inc.), NEC America, Inc., Comcast/Metrophone, MCI Worldcom Communications, Inc., Globalstar USA, Inc., SBC Telecom Inc., BellSouth Mobility LLC (successor-in-interest to BellSouth Mobility, Inc.), Cellular Telecommunications Industry Association, Westinghouse Communications, John Does 1-100, Cingular Wireless (also known as Washington Baltimore Cellular Limited Partnership), Nextel Partners Operating Corporation, AB Cellular Holdings, LLC (doing business as LA Cellular, doing business as Los Angeles Cellular Telephone Company), Radiofone Inc., Planet Cellular Communications, Incorporated, Visitor Cellular L.L.C., LGIC Corporation, Bell South Mobility, U.S. West Wireless, L.L.C., U.S. West Communications, Incorporated, GTE Mobilnet of San Diego, Incorporated, GTE Wireless of San Diego, LLC, Cellular Carriers Association of California, and Sprint PCS Limited Partnership.

Respondents are J. Douglas Pinney, Patricia S. Colonell, Francis J. Farina, Crystal Gilliam, Dimitri Mack, and Riedy Gimpelson. Respondents were plaintiffs in the district court and appellants in the court of appeals.

CORPORATE DISCLOSURE STATEMENT

Cellco Partnership doing business as Verizon Wireless ("Cellco" or "Verizon Wireless" or "VZW") is a Delaware general partnership with debt in the hands of the public. Cellco has eight partners in total. Six of the partners representing 55% of the interest in Cellco are ultimately owned by Verizon Communications Inc. ("Verizon"); none is publicly held. Two of the partners representing 45% of the interest in Cellco are ultimately owned by Vodafone Group Plc ("Vodafone"). Neither of these partners is publicly held. Verizon is a publicly held Delaware corporation. Vodafone is a publicly held British corporation. Neither Verizon nor Vodafone has a parent company, and no publicly held company has a 10% or greater ownership in either entity.

Verizon Communications Inc., incorrectly named as Verizon Communications, Inc., is a Delaware Corporation. Verizon Communications Inc. does not have a parent company, and no publicly held company owns 10% or more of the stock of Verizon Communications Inc.

Verizon Maryland Inc. is a wholly owned subsidiary of Verizon Communications Inc.

Panasonic Corporation of North America, doing business as Matsushita Electrical Corporation of America and incorrectly named as Matsushita Corporation of America, is a wholly-owned subsidiary of Matsushita Electric Industrial Co., Ltd., a Japanese publicly held company that owns 10% or more of its stock.

SBC Communications, Inc. does not have a parent company, and no publicly held company owns more than 10% of the stock of SBC Communications, Inc.

Cellular One Group is a Delaware general partnership. The current general partners of Cellular One Group are Cellular One L.L.C. (a subsidiary of Western COG Corporation) and Western COG Corporation. Until on or about August 1, 2005, Western COG Corporation was a subsidiary of Western Wireless Corporation. Western COG Corporation is currently a subsidiary of Western Wireless LLC, which is in turn a subsidiary of Alltel Corporation. Neither Cellular One L.L.C. nor Western COG Corporation are publicly-traded. Western Wireless Corporation was a publicly-traded corporation until its merger with Alltel Corporation on or about August 1, 2005. Alltel Corporation is a publicly-traded corporation. As a condition to the approval of the merger between Western Wireless Corporation and Alltel Corporation, the Department of Justice and the Federal Communications Commission have required that Alltel divest certain assets of Western Wireless LLC, including Cellular One Group. A management trustee, David Turetsky, has been appointed to manage the assets which are subject to divestiture.

VoiceStream Wireless Corporation, now known as T-Mobile USA, Inc., is a subsidiary of Deutche Telekom AG. No other publicly-held company owns 10 % or more of VoiceStream Wireless Corporation's stock.

Communications Electronics, Inc., also known as C.E.I., Inc., is a privately held Maryland corporation. There is no parent or publicly held company that owns 10% or more of the corporation's stock. Further, it is not an affiliate or parent of any corporation.

Southern Communications Services, Inc., incorrectly named as Southern Telecom, Inc. a/k/a Southern Linc, is a wholly-owned subsidiary of Southern Company, a publicly traded company organized under the laws of the State of Delaware.

Powertel, Inc., is a wholly-owned subsidiary of T-Mobile USA, Inc. Powertel PCS, Inc., is a wholly-owned subsidiary of Powertel, Inc. Powertel/Atlanta, Inc., is a wholly-owned subsidiary of Powertel PCS, Inc.

Mitsubishi Wireless Communications, Inc. was dissolved in March 2002. Prior to that time, Mitsubishi Wireless Communications, Inc. was wholly-owned by Mitsubishi Electric US Holdings, Inc., a Delaware corporation, which in turn is wholly-owned by Mitsubishi Electric Corporation (of Japan).

Baltimore Business Communications, Inc. is a Maryland corporation and is privately held by three (3) shareholders who are Maryland residents. No other corporation or entity owns stock in Baltimore Business Communications, Inc. It has no parent companies and no subsidiaries or affiliated companies. Accordingly, no publicly held company has a 10% or greater ownership in Baltimore Business Communications, Inc.

Sony Electronics Inc. is an indirect wholly-owned subsidiary of Sony Corporation of America ("SCA"). SCA is an indirect wholly-owned subsidiary of Sony Corporation, which exists under the laws of Japan. Sony Corporation's American Depository Receipts are traded on the New York Stock Exchange. No publicly held company owns 10% or more of the stock of Sony Electronics Inc.

SANYO North America Corporation, incorrectly named as Sanyo North America, Inc. and SANYO Corporation, is a wholly owned subsidiary of SANYO Electric Co., Ltd., a Japanese publicly held company that owns 10% or more of its stock.

Samsung Electronics America, Inc. is a wholly owned subsidiary of Samsung Electronics Co., Ltd., which is a publicly traded entity listed on the Korea Stock Exchange.

Sprint Spectrum L.P. (d/b/a Sprint and Sprint PCS) is a Delaware limited partnership. The general partner of Sprint Spectrum L.P. is Sprint Spectrum Holding Company, L.P., a Delaware limited partnership; the limited partner is MinorCo, L.P., a Delaware limited partnership. The general partner of Sprint Spectrum Holding Company, L.P. is Sprint Enterprises, L.P., a Delaware limited partnership; the limited partners are SWV Six, Inc., a Colorado corporation, SWV One Telephony Partnership, a Delaware partnership, and SWV Two Telephony Partnership, a Delaware partnership. The general partner of MinorCo, L.P. is Sprint Enterprises, L.P.; the limited partners are SWV Six, Inc., SWV One Telephony Partnership and SWV Two Telephony Partnership. The general partner of Sprint Enterprises, L.P. is US Telecom, Inc., a Kansas corporation; the limited partner is UCOM, Inc., a Missouri corporation. The partners of SWV One Telephony Partnership are SWV One, Inc., a Delaware corporation and SWV Two, Inc., a Delaware corporation. The partners of SWV Two Telephony Partnership are SWV Three, Inc., a Delaware corporation, and SWV Four, Inc., a Delaware corporation. The partnerships and corporations above are not themselves publicly traded. All of the partnerships above are indirect, wholly-owned subsidiaries of Sprint Corporation, a Kansas corporation. All of the corporations above are direct, wholly-owned subsidiaries of Sprint Corporation. The stock of Sprint Corporation is publicly traded under the symbol FON. On August 3, 2005, the Federal Communications Commission and the Antitrust Division of the department of Justice approved a proposed merger between Nextel Communications, Inc. and Sprint Corporation. The deal is expected to close in the third quarter of 2005. Under the terms of the proposed transaction, all of the stock of Sprint Corporation is to be owned by Sprint Nextel Corporation.

Cellular Telecommunications & Internet Association

("CTIA") is a trade association incorporated as a non-profit corporation under the laws of the District of Columbia. CTIA has no parent corporation, and no publicly held company has a 10% or greater interest in CTIA.

The Telecommunications Industry Association ("TIA") is a non-profit trade association and has no parent corporation and has issued no stock to the public.